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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

DAMIAN JACKSON,

Defendant and Appellant.

B278098

Los Angeles County  
Super. Ct. No. BA430864

APPEAL from a judgment of the Superior Court of  
Los Angeles County, Craig J. Mitchell, Judge. Affirmed.

Michelle A. Douglass, under appointment by the Court  
of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler,  
Chief Assistant Attorney General, Lance E. Winters, Assistant  
Attorney General, Victoria B. Wilson and Viet H. Nguyen,  
Deputy Attorneys General, for Plaintiff and Respondent.

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After the August 2014 shooting of Marion (Suge) Knight at a Hollywood nightclub, a related search warrant issued and executed in October 2014 resulted in Damian Jackson's arrest and the seizure of a handgun. Jackson pleaded no contest to one count of possession of a firearm as a felon, and the trial court sentenced him to two years in state prison. Jackson appeals, arguing the trial court should have granted his motions to quash and to traverse the search warrant. We affirm.

### **BACKGROUND**

At a pre-video music awards party hosted by Chris Brown at a Hollywood nightclub on August 24, 2014, a gunman shot Suge Knight six times. Two other people were wounded. Jackson was present at the party.

Two months after the shooting, on October 22, 2014, Los Angeles County Sheriff's Department Sergeant Richard Biddle obtained a warrant to search Jackson and an apartment on Wilshire Boulevard for various items, including a handgun and ammunition. Sergeant Biddle's supporting affidavit accompanying the search warrant was sealed to protect the ongoing criminal investigation. When sheriff's deputies arrested Jackson on October 23, 2014 as he left the two-bedroom apartment, Jackson told the officers there was a handgun on the bed. The officers found the handgun on the bed as described. After receiving *Miranda*<sup>1</sup> warnings at the station, Jackson admitted he owned the handgun.

Before the preliminary hearing, Jackson's motion to unseal the affidavit was granted, and, after an in camera hearing, the

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<sup>1</sup> *Miranda v. State of Arizona* (1966) 384 U.S. 436.

affidavit was redacted and provided to Jackson under a protective order.

An information filed April 1, 2015<sup>2</sup> charged Jackson with one count of possession of a firearm as a felon in October 2014 (Pen. Code, § 29800, subdivision (a)(1)).<sup>3</sup> The information alleged Jackson had served a prior prison term (§ 667.5, subd. (b)) and had suffered a prior strike conviction (§§ 667, subds. (b)-(j), 1170.12). (Jackson was not charged with any offense related to the Suge Knight shooting.) Jackson pleaded not guilty.

On July 15, 2015, Jackson filed under seal a motion to quash the search warrant and suppress evidence. On July 24, 2015, the trial court denied the motion on five grounds. First, the search warrant articulated what appeared on the surveillance video of the shooting; second, the warrant described where Suge Knight and Jackson were at the time of the shooting; third, the warrant articulated the likely direction from which the shots that hit Knight were fired, based on his wounds; fourth, the warrant stated that the video showed Jackson behaving in a calm and deliberate manner after the shooting while the other patrons were frantic and attempting to flee, supporting an inference that “as the shooter, he knew he was in no danger”; and fifth, the warrant contained multiple individuals’ statements that Jackson was “present at the scene and in the location where the shots

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<sup>2</sup> The file stamp on the information mistakenly gives April 1, 2014 as the filing date, but the text of the information, alleging Jackson possessed the firearm on October 23, 2014 (and of course the date of the shooting in August 2014), make clear the information was filed in 2015.

<sup>3</sup> All subsequent statutory references are to the Penal Code.

were likely fired.” These factors alone established probable cause despite the superfluous information and rumor in the warrant. The court stated it had not viewed the videotape (“I simply focused on what was contained within the search warrant affidavit as to what the affiant observed on that videotape.”). Jackson’s counsel stated he did not know whether the magistrate had viewed the videotape, and he intended to make a discovery motion to view the tape and would file a motion to traverse.

On March 18, 2016, Jackson filed a motion to traverse the warrant and suppress evidence, requesting an in camera hearing under *People v. Hobbs* (1994) 7 Cal.4th 948 (*Hobbs*) and an evidentiary hearing under *Franks v. Delaware* (1978) 438 U.S. 154. Jackson argued that the statements made about the video in Sergeant Biddle’s affidavit were contradicted by the actual video, so that the showing of probable cause was based on falsehoods. The motion also argued that none of the three confidential informants<sup>4</sup> in the affidavit had seen the shooting and all were unreliable. Although Knight also was quoted in the affidavit, his information was not reliable. The motion asked the court to conduct its own inquiry to examine the parts of the affidavit that were redacted and/or sealed for inconsistencies or insufficiencies, view the videotape, compare it to the affidavit, and then conduct a full evidentiary hearing. If the court

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<sup>4</sup> The warrant affidavit quotes two confidential informants. The record does not contain a motion to disclose the confidential informants’ identities. The name of a third individual who was not a confidential informant (and who provided much material information placing Jackson at the party and providing background for his relationship with Knight) was redacted when the trial court unsealed the affidavit.

determined it was reasonably probable the affidavit included a knowingly false statement material to the finding of probable cause, the prosecution should be given the option to consent to disclosure of the sealed material, or suffer an adverse order on the motion to traverse. The court must take it upon itself to examine the affidavit in full, and “can deny the motion to traverse if it determines that there is no support for the defendant’s motion.”

In opposition, the prosecution argued the affidavit’s representations about the video were not material because even without any reference to the video, the affidavit supported a finding of probable cause.

At the hearing on March 30, 2016, Jackson’s counsel asked the court to watch the video. The prosecutor pointed out that the issuing magistrate had not viewed the video. The court stated it had scrutinized both the unredacted and redacted versions of the affidavit, and “if I completely removed representations as to what was contained and observed within the video, probable cause still existed for the issuance of the warrant.” The court denied the motion to traverse.

Jackson’s counsel asked the court to conduct an in camera hearing under *Hobbs* to review the videotape and question Sergeant Biddle. The court denied the request: “[B]ased on my review of the material contained in the affidavit, absent any reference to the videotape, this was not a close call,” and the representations made by confidential informants were corroborated by “an extensive amount of other material that is contained within the warrant affidavit.”

Jackson pleaded no contest on July 19, 2016, admitting the allegations he served a prior prison term and had been convicted

of a strike offense. At sentencing on September 23, 2016, the court granted Jackson's motion to strike his prior strike conviction, and sentenced Jackson to two years in state prison, fines, and fees. Jackson filed this timely appeal.

### DISCUSSION

"A defendant may 'seek further review of the validity of a search or seizure on appeal' following a conviction based on a no contest plea, if 'at some stage of the proceedings prior to conviction he or she has moved for . . . the suppression of the evidence.'" (*People v. Acevedo* (2012) 209 Cal.App.4th 1040, 1052.) When all or part of a search warrant affidavit has been sealed to protect a confidential informant's identity and the defendant moves to traverse and quash the warrant, the court normally is required to conduct an in camera hearing at which the defendant and counsel are not present, to determine whether sufficient grounds justify maintaining the confidentiality of the informant's identity and if the affidavit was properly sealed, " 'i.e., whether the extent of the sealing is necessary to avoid revealing the informant's identity.'" (*People v. Martinez* (2005) 132 Cal.App.4th 233, 240-241.) "If the court determines the affidavit, or a portion thereof, was properly sealed, it must next determine if there is any merit to the defendant's motion to traverse based on 'the public and sealed portions of the search warrant affidavit, including any testimony offered at the in camera hearing.'" (*Id.* at p. 241.) As to a motion to quash, the court should " 'determine whether, under the "totality of the circumstances" presented in the search warrant affidavit . . . there was "a fair probability" that contraband or evidence of a crime would be found in the place searched.'" (*Ibid.* (quoting *Hobbs, supra*, 7 Cal.4th at p. 975).)

Here, Jackson moved to unseal the affidavit, and before the preliminary hearing the trial court unsealed the affidavit and released a redacted copy to the defense. (The record on appeal does not include any motion to unseal or any record of an in camera hearing.) The unsealed, redacted affidavit is in the appellate record. The trial court based its denial of the motion to quash on its review of the affidavit, including the affidavit's representations about what appeared on the video, without watching the video itself. Jackson then filed a motion to traverse, stating that the videotape contradicted the affidavit, asking the court to view the videotape and review the redacted portions of the affidavit for inconsistencies, and requesting an in camera hearing and an evidentiary hearing. The trial court declined to hold an in camera hearing and denied the motion to traverse because after reviewing the unredacted version, probable cause still existed even without any of the representations about the videotape, and the confidential informants' statements were corroborated.

On appeal, Jackson requests that we review the sealed portions of the affidavit to determine whether the trial court abused its discretion when it denied the motions to quash and to traverse the warrant. (Jackson also requests we review any transcript of an in camera hearing, although the record does not show that such a hearing took place.) We obtained the sealed, unredacted search warrant affidavit and reviewed it along with the entire record on appeal. We affirm the trial court's denial of the motions to quash and to traverse the search warrant.

Our inquiry on review of the court's denial of the motion to quash is "whether the magistrate had a substantial basis for concluding a fair probability existed that a search would uncover

wrongdoing.” (*People v. Kraft* (2000) 23 Cal.4th 978, 1040.) We consider whether the unredacted affidavit contained facts that would lead a person of ordinary caution “ ‘to believe, and conscientiously to entertain, a strong suspicion of the guilt of the accused.’ [Citation.] The magistrate’s determination of probable cause is entitled to deferential review.” (*Id.* at p. 1041.) “Doubtful or marginal cases are to be resolved by the preference to be accorded to warrants.” (*People v. Mikesell* (1996) 46 Cal.App.4th 1711, 1716.)

Jackson’s motion to traverse the warrant argued the affidavit contained intentional or reckless misrepresentations about what the video showed before and after the shooting. “Generally, in order to prevail on a motion to traverse an affidavit, the defendant must demonstrate (1) that the affidavit included a false statement made knowingly and intentionally, or with reckless disregard for the truth, and (2) that the allegedly false statement was necessary to the finding of probable cause.” (*People v. Luera* (2001) 86 Cal.App.4th 513, 524-525.) If the defendant makes a substantial preliminary showing of misstatements that were intentionally false, or made in reckless disregard of the truth, the defendant is entitled to an evidentiary hearing to establish the affiant’s state of mind, and that the false statements were necessary to the finding of probable cause. (*People v. Madrid* (1992) 7 Cal.App.4th 1888, 1899.)

In reviewing the denial of both motions, we defer to the trial court’s factual findings if supported by substantial evidence, and use our independent judgment to determine whether, given those factual findings, the search was reasonable under the Fourth Amendment. (*People v. Ayala* (2000) 23 Cal.4th 225, 255; *People v. Hepner* (1994) 21 Cal.App.4th 761, 776.)



We have reviewed the unredacted, sealed affidavit, and we agree with the trial court that the unredacted affidavit supports the trial court's finding of probable cause. Substantial evidence supports the trial court's conclusion that facts in the affidavit (Jackson's presence at the nightclub, his proximity to Knight at the time of the shooting, and his calm behavior after the shooting) would lead an ordinary person to entertain a strong suspicion of Jackson's guilt, and gave the magistrate a substantial basis for strongly suspecting a search would uncover evidence of wrongdoing. As for the motion to traverse, the trial court declined to hold an evidentiary hearing, concluding that the alleged misstatements about the video were not material because, even removing any references to the video, "this was not a close call." We agree. The unredacted affidavit contains ample information, unrelated to the videotape and independent of the two confidential informants, establishing probable cause.

The trial court correctly denied the motions to quash and to traverse the warrant. We therefore affirm the judgment.

**DISPOSITION**

We affirm the judgment.

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EGERTON, J.

We concur:

EDMON, P. J.

LAVIN, J.